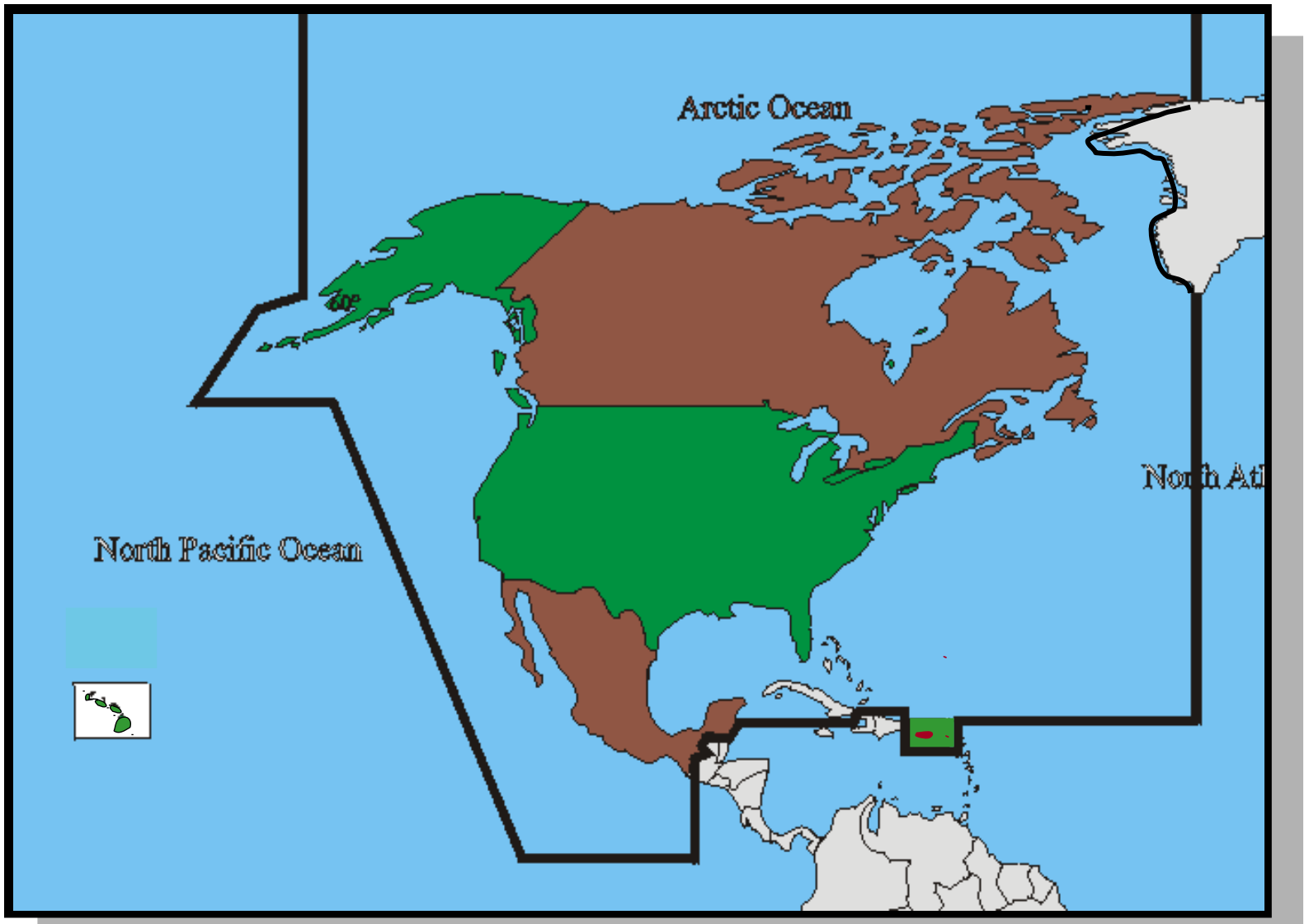
"What our nation represents doesn't live in our walls
It's not in buildings or shopping malls
If all our structures came crashing down;
It would still be there, safe and sound"

HOMELAND SECURITY

Col Mark S. Riley, USMCR
SJ A SJ FHQ-HLS

21 Feb 2003

USNORTHCOM AOR



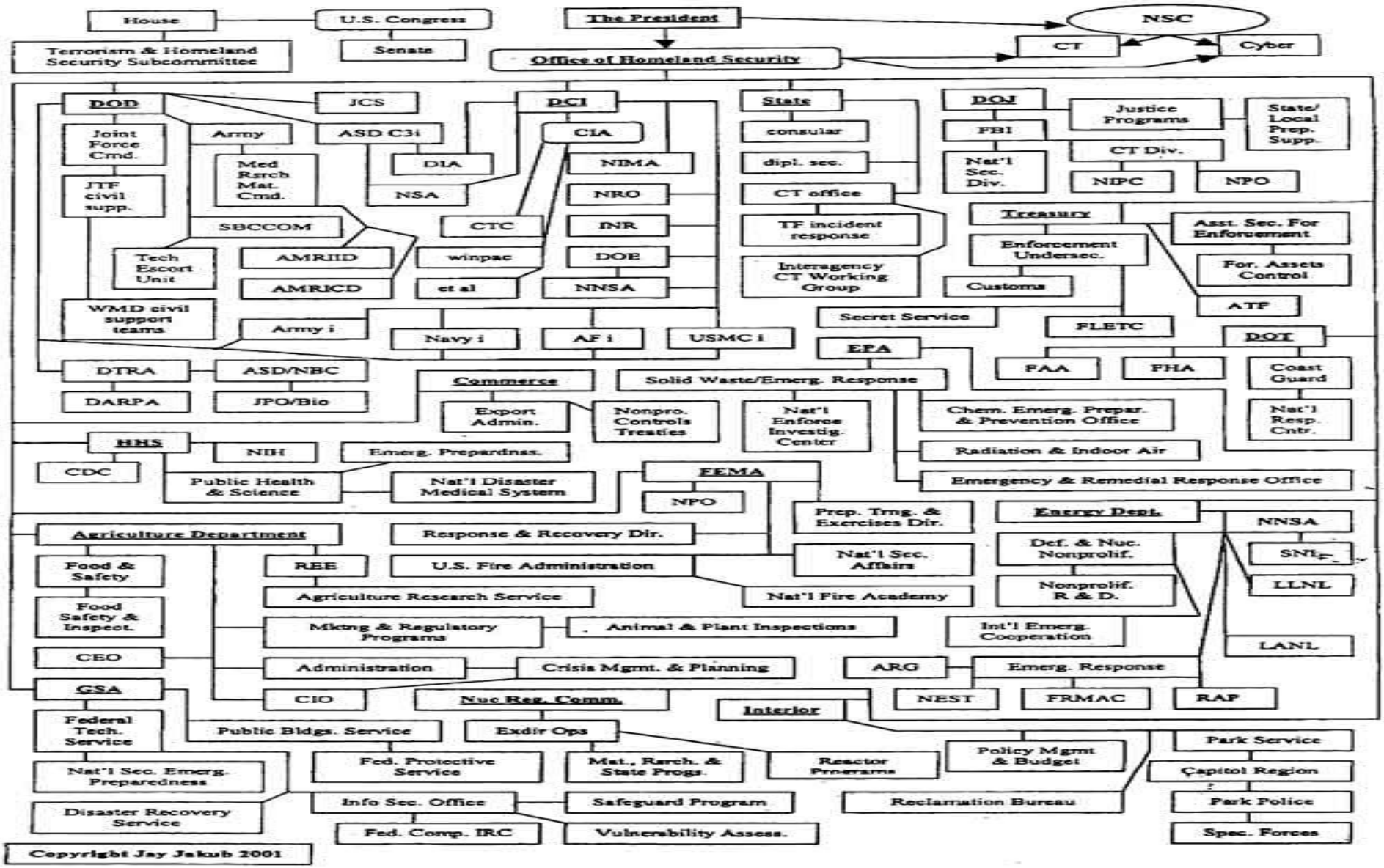
AGENDA

September 11, 2001

- Organizational Responses
- Definitions
- Operational Law Issues in the Domestic Environment

UNCLASSIFIED

HOMELAND SECURITY FRIENDLY FORCES



BACKGROUND

Organizational Response To 9/11

- Office of Homeland Security
- Homeland Security Council
- Department of Homeland Security
- Assistant Secretary of Defense – Homeland Defense
- Combatant Command Responses

OFFCIE OF HOMELAND SECURITY

E.O. 13228
8 Oct 01

- **Mission – to develop and coordinate the implementation of a comprehensive national strategy to secure the US from terrorist threats or attacks**
- **Functions – to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to and recover from terrorist attacks within US**
- **Tasks -**

  National Strategy Detection Preparedness

  Prevention Protection Incident Management

  Response & Recovery Continuity of Government

  Public Affairs Cooperation w/State & Local

  Review Legal Authorities & Develop Legislative Proposals

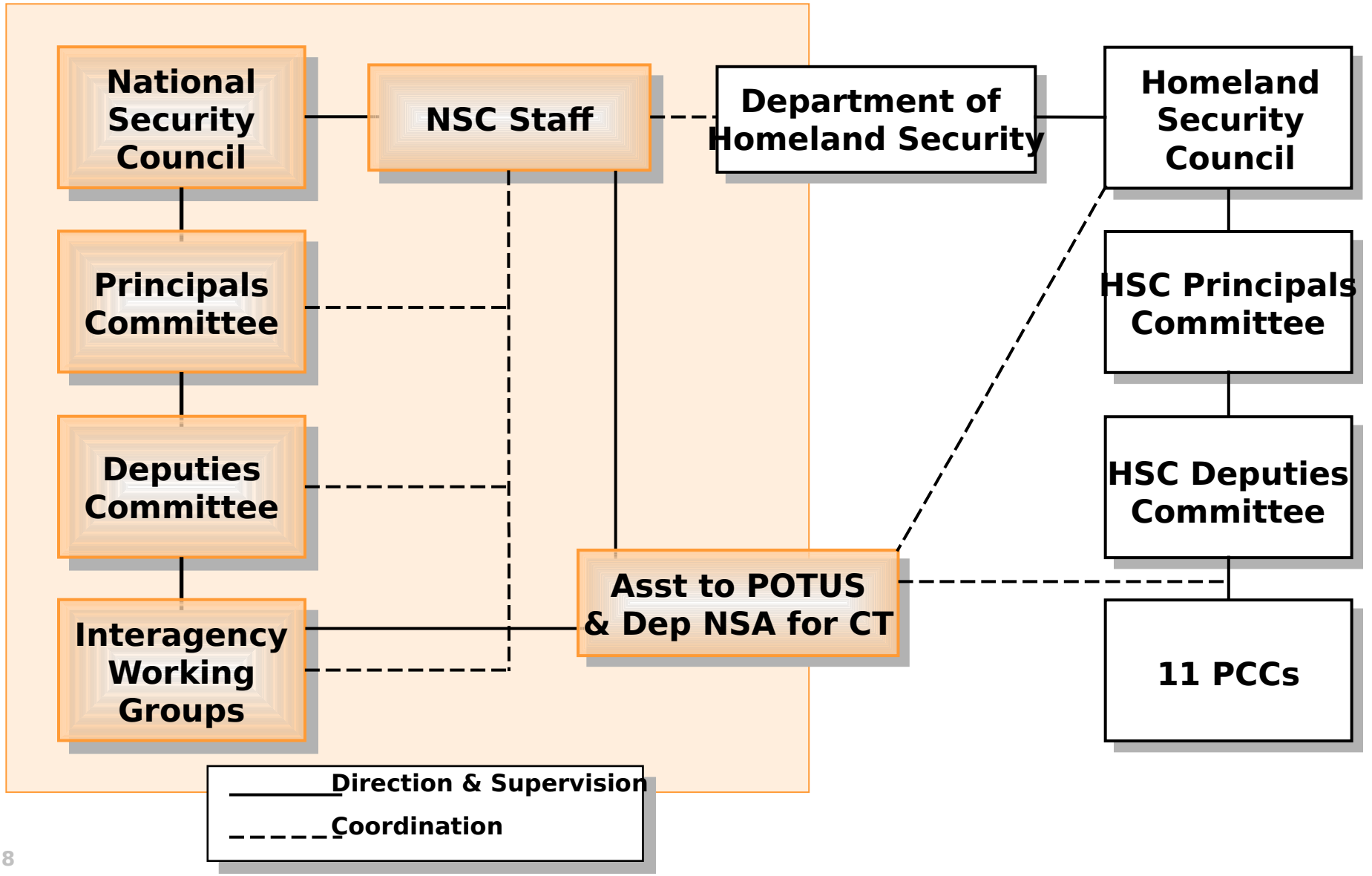
  Budget Review

HOMELAND SECURITY COUNCIL

E.O. 13228

- **Mission – Advise and Assist the President with respect to all aspects of homeland security. Serve as the principal forum for consideration of policy relating to terrorist threats and attacks within US**
  - **Mechanism for ensuring coordination of HLS-related activities of departments & agencies and effective development/implementation of HLS policies**
- **Membership - POTUS, VP, SEC TREA, SECDEF, AG, SEC HHS, SEC TRAN, DIR FEMA, DIR FBI, DIR CIA, and Asst to POTUS for HS & others as designated**
- **E.O. 13284 (23 Jan 03) – amends E.O 13228 to add "Secretary of Homeland Security"**

NATIONAL SECURITY COUNCIL SYSTEM



DEPARTMENT OF HOMELAND SECURITY

Homeland Security Act of 2002
P.L. 107-296

- Creates HSD and consolidates 22 existing agencies
- Mission – 1) Prevent Terrorist Attacks
  2) Reduce Nation's Vulnerability
  3) Minimize Damage and Assist with Recovery
- Four Primary Directorates
  - Information Analysis and Infrastructure Protection
  - Science and Technology
  - Border and Transportation Security
  - Emergency Preparedness and Response
- Of DOD Interest
  - Specifies HSD has no authority to engage in warfighting, the military defense of the US, or other military activities – nor shall anything in the act limit DOD
  - Sense of Congress reaffirming Posse Comitatus Act
  - Joint Interagency Task Force to include DOD

OSD REORGANIZATION

ASD – Homeland Defense

- National Defense Authorization Act FY03 creates new Assistant Secretary
- Mr. Paul McHale has been confirmed and sworn
- ASD-HD has overall supervision of homeland defense activities, support to civil authorities, emergency preparedness and domestic crisis management within DOD
- Will assume SEC Army (DOMS) responsibilities
- DOMS functions will transfer to Joint Staff
- One Principal Deputy Assistant Secretary and 3 Deputy Assistant Secretaries
  - Civil Support
  - Force Planning and Employment
  - Strategy, Plans and Resources

UNITED STATES
NORTHERN COMMAND

HLS PRE-NORTHCOM

QUADRENNEAL DEFENSE REVIEW

30 SEPT 2001

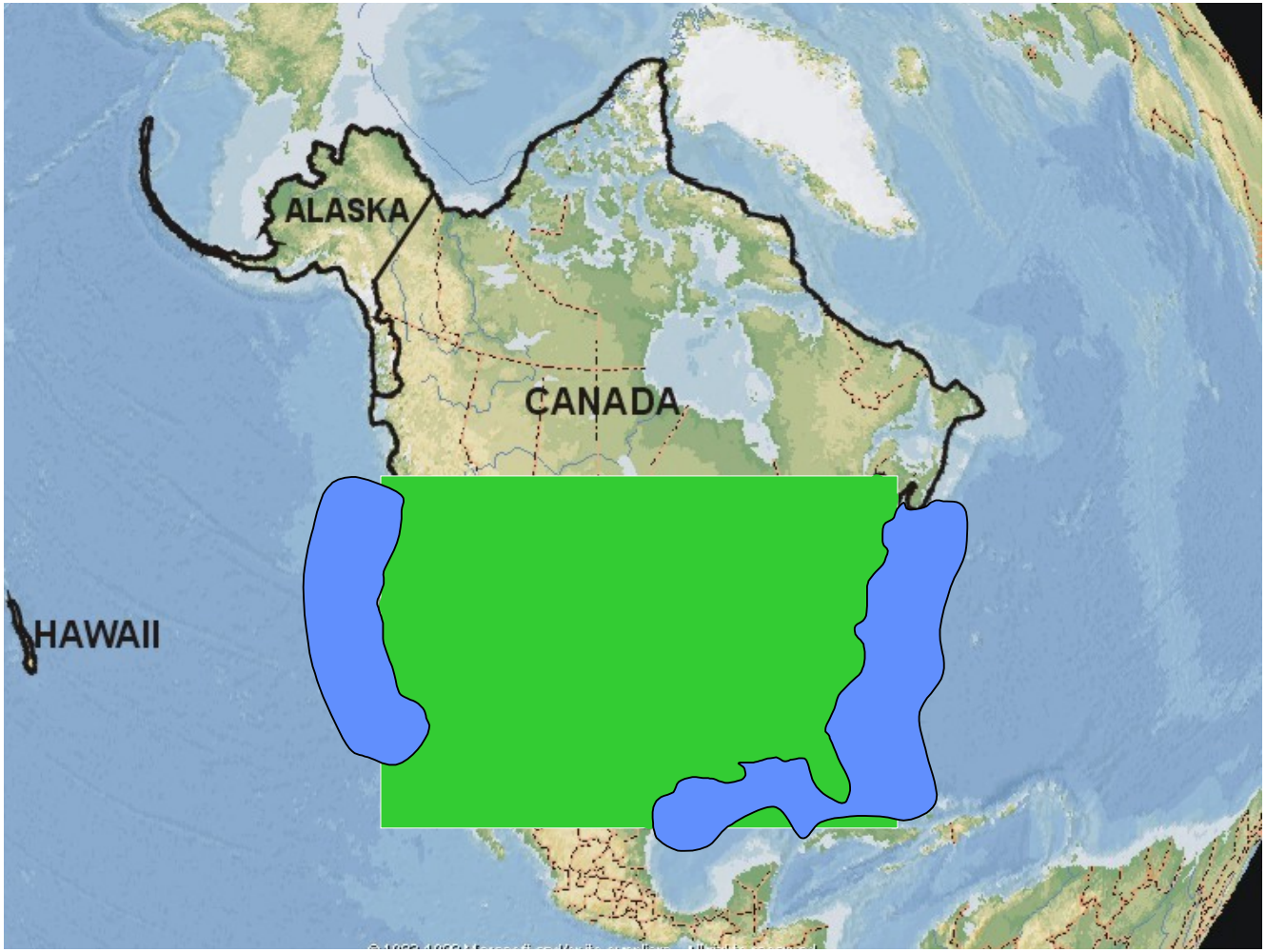
The highest priority of the U.S. military is to defend the Nation from all enemies. The United States will maintain sufficient military forces to protect the U.S. domestic population, its territory, and its critical defense-related infrastructure against attacks emanating from outside the U.S. borders, as appropriate under U.S. laws. U.S. forces will provide strategic deterrence and air and missile defense and uphold U.S. commitments under NORAD. In addition, DoD components have the responsibility, as specified in U.S. law, to support U.S. civil authorities as directed in managing the consequences of natural and man-made disasters and CBRNE-related events on U.S. territory. Finally, the U.S. military will be prepared to respond in a decisive manner to acts of

HLS PRE-NORTHCOM

CJCS OCTOBER 01 EXORD TO USJFCOM

"USJFCOM WILL, ON ORDER, CONDUCT LAND AND MARITIME OPERATIONS TO ENSURE THE PREPARATION FOR, PREVENTION OF, DETERRENCE OF , AND DEFENSE AGAINST LAND AND MARITIME AGGRESSION TARGETED AT US TERRITORY, SOVEREIGNTY, DOMESTIC POPULATION, AND INFRASTRUCTURE, AS WELL AS DIRECTLY SUPPORTING THE LEAD FEDERAL AGENCY (LFA) IN THE MANAGEMENT OF THE CONSEQUENCES OF SUCH LAND AND MARITIME AGGRESSION; AND OTHER DOMESTIC CIVIL SUPPORT"

JFCOM JOINT OPERATIONS AREA



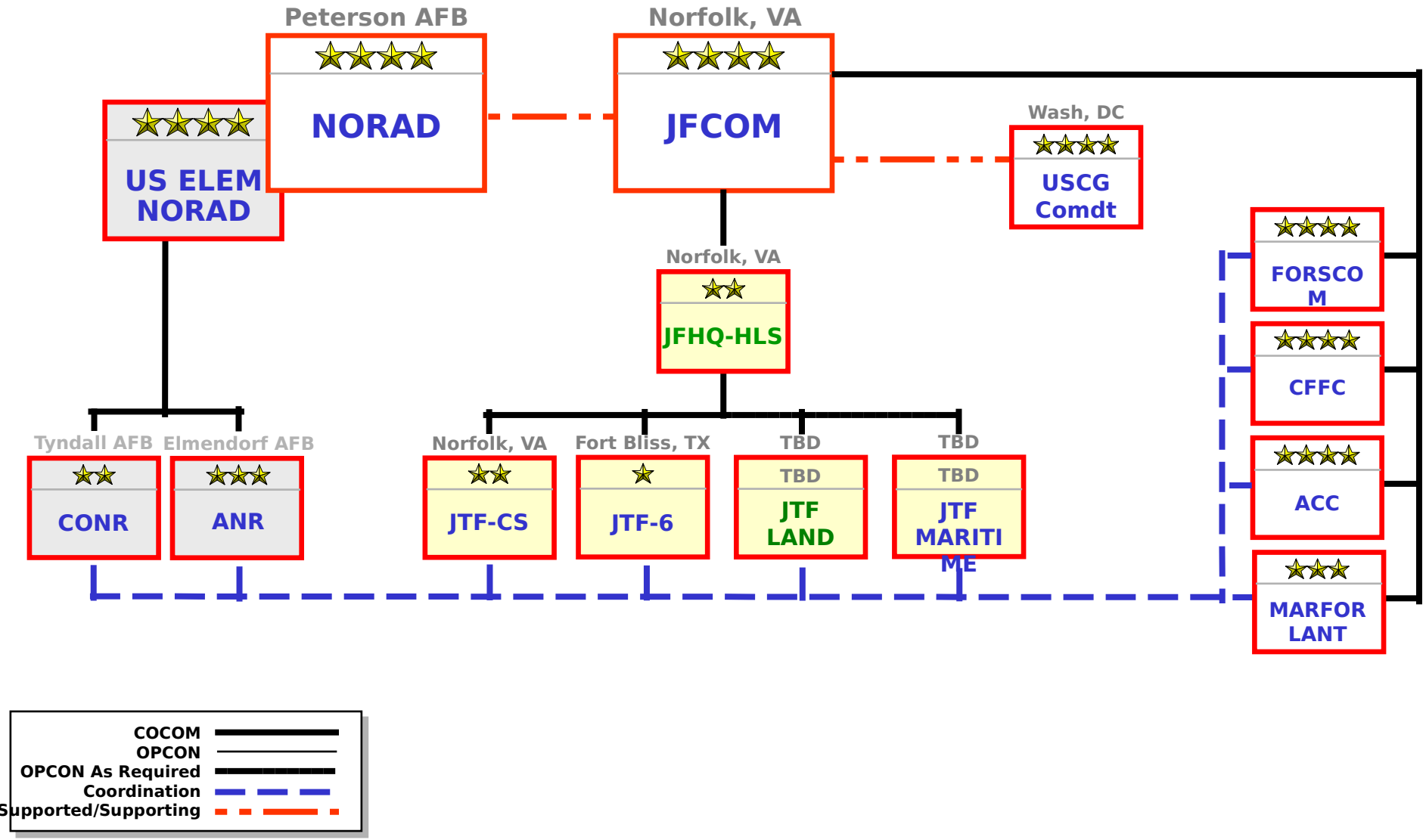
- CONUS (contiguous 48 states and DC)
- Adjacent littoral waters out to 200NM from the baseline (less recognized territory of other nations within 200NM space)
- USCINCJFCOM currently responsible for land and maritime HLS
- CINCNORAD responsible for aerospace HLS

JFCOM EXECUTES

JFHQ HOMELAND SECURITY

- Establishes Joint Forces Headquarters-Homeland Security (JFHQ-HLS) effective 01 Feb 2002
- JFHQ-HLS Mission: Plan and conduct *land and maritime military operations* and provides *Military Assistance to Civilian Authorities (MACA)* in order to protect and defend the United States of America

COMMAND RELATIONSHIPS PRE- OCT 02



BIRTH OF USNORTHCOM

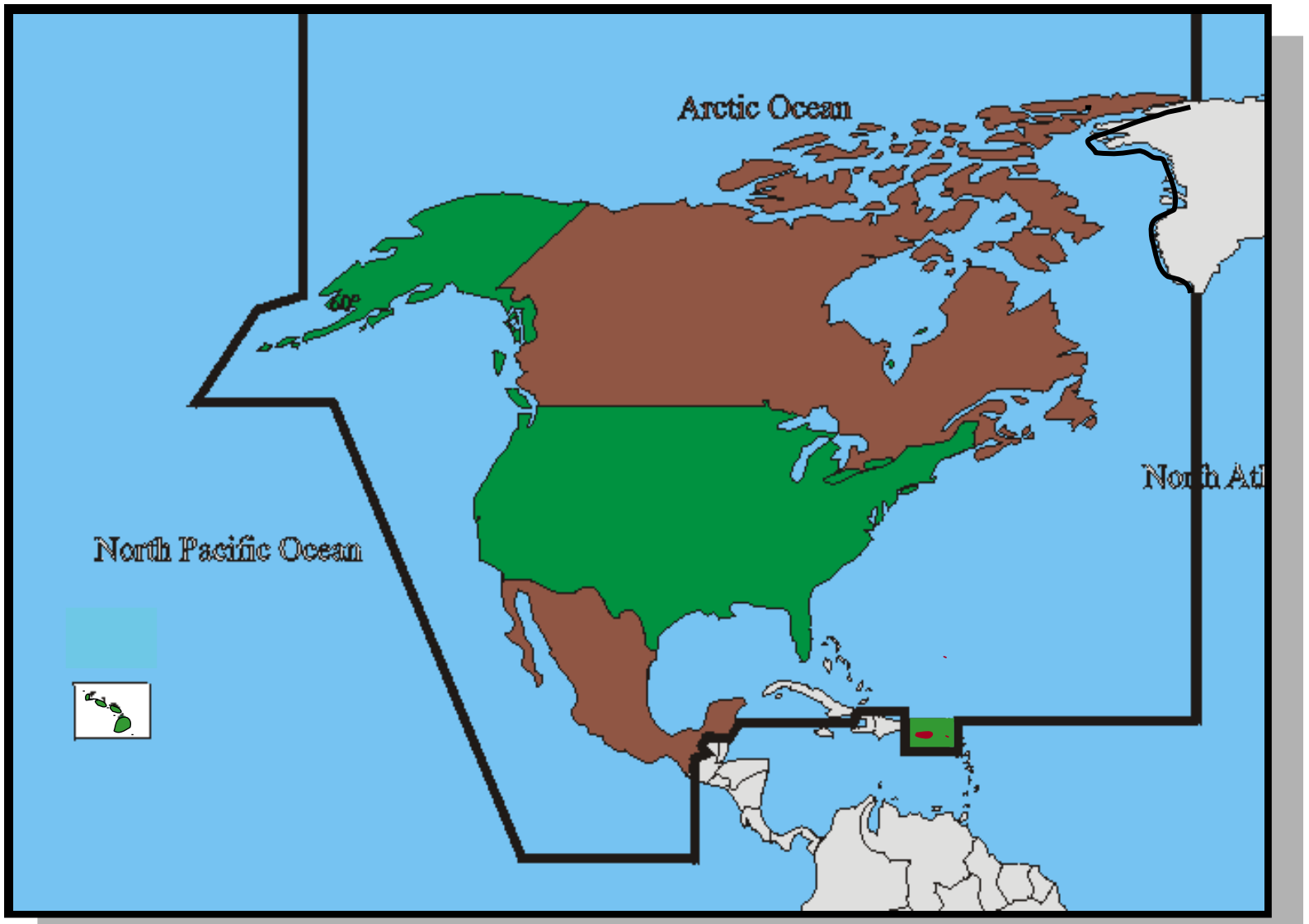
KEY DOCUMENTS

- CJCS Terms of Reference (Mar 02)– develop plan to establish geographic combatant command with North American AOR and IOC 01 Oct 02
- Unified Command Plan 2002 (Apr 02)
  - Established USNORTHCOM
  - Triple Hatted
  - Mission – UCP Para 11 & 12 plus MACA
- Implementation Plan signed by CJCS – July 02
- Initial Operational Capable – 01 Oct 02
- Forces For Document – 02 Oct 02
- CJCS EXORD Oct 2002 – transferred HLD/MACA mission to NORTHCOM
- Mod 1 Feb 2003 – assigns forces to NORTHCOM for HLD missions in case of conflict

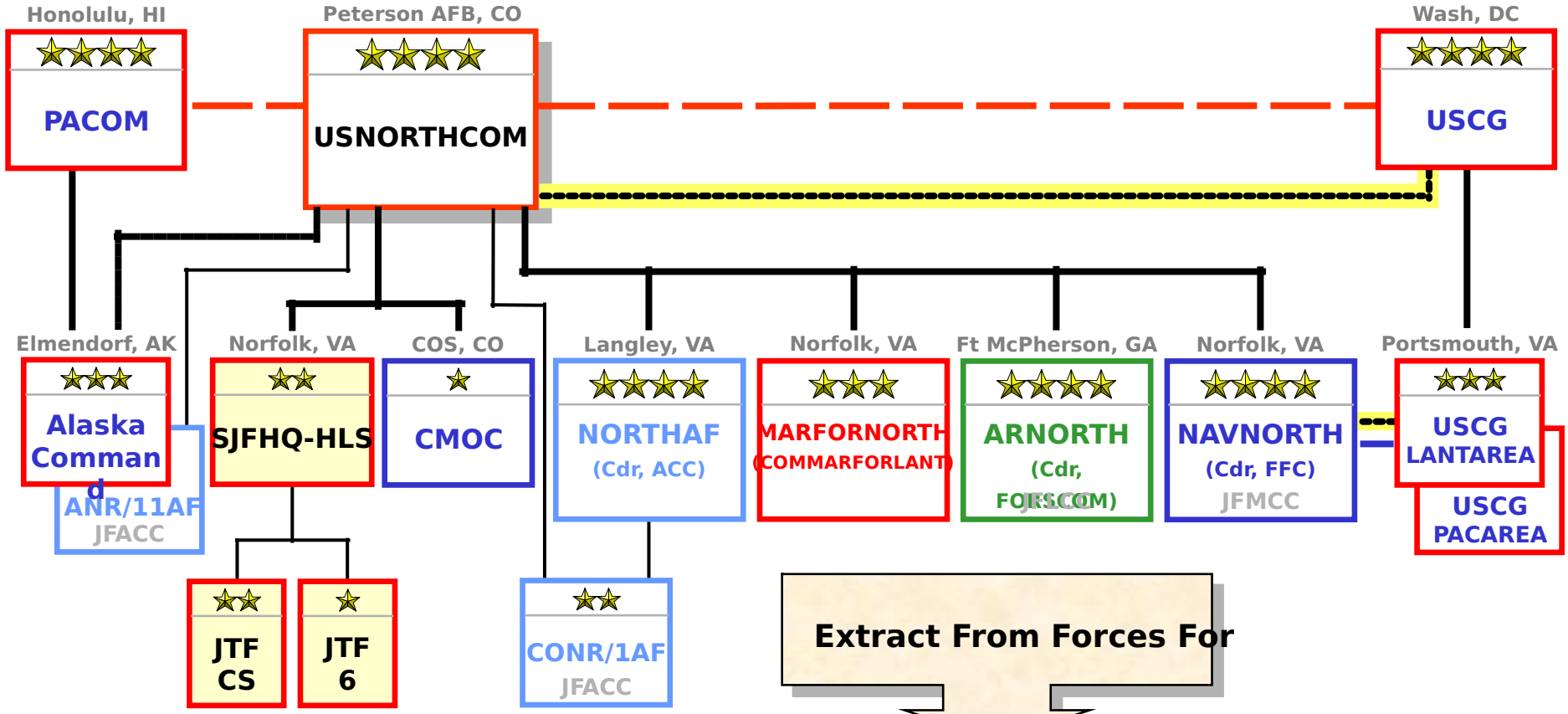
MISSION STATEMENT

United States Northern Command conducts operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the assigned area of responsibility; as directed by the President or Secretary of Defense, provides Military Assistance to Civil Authorities including Consequence Management operations

USNORTHCOM AOR



USNORTHCOM C2 Architecture



- Cdr, FORSCOM is designated the Army Service Component Commander (ASCC) to NORTHCOM as ARNORTH
- Cdr, ACC is designated the AFSCC to NORTHCOM as NORTHAF
- Cdr, FCC is designated the NSCC to NORTHCOM as NAVNORTH
- Cdr, MARFORLANT is assigned to NORTHCOM as

JTF-CS MISSION STATEMENT

JTF-CS plans and integrates DOD support to a designated lead federal agency for domestic CBRNE incidents. When directed, JTF-CS deploys to an incident site and provides command and control of assigned DOD forces to provide military assistance to civil authorities.

JTF-6 MISSION STATEMENT

JTF-6 synchronizes and integrates DOD operational, intelligence, and training support to the counter-drug efforts of domestic law enforcement agencies in the Continental United States and provides support to domestic agencies in combating terrorism.

BORDER DETECTION

INTEL SUPPORT

AVIATION RECONNAISSANCE

MULTI-SUBJECT TACTICAL INSTRUCTION

ENGINEER SUPPORT

Recent SJFHQ-HLS Operations

- Washington, DC Sniper Attack
- Space Shuttle Columbia Recovery
- National Special Security Events
- Border Security
- Natural Disaster / Wildfire Support
- Counter-Drug Operations and Training
- Presidential Support Missions
- State of the Union Address
- USNORTHCOM Plan 1003V
- ORE / RRE Plans, Warning

Definitions

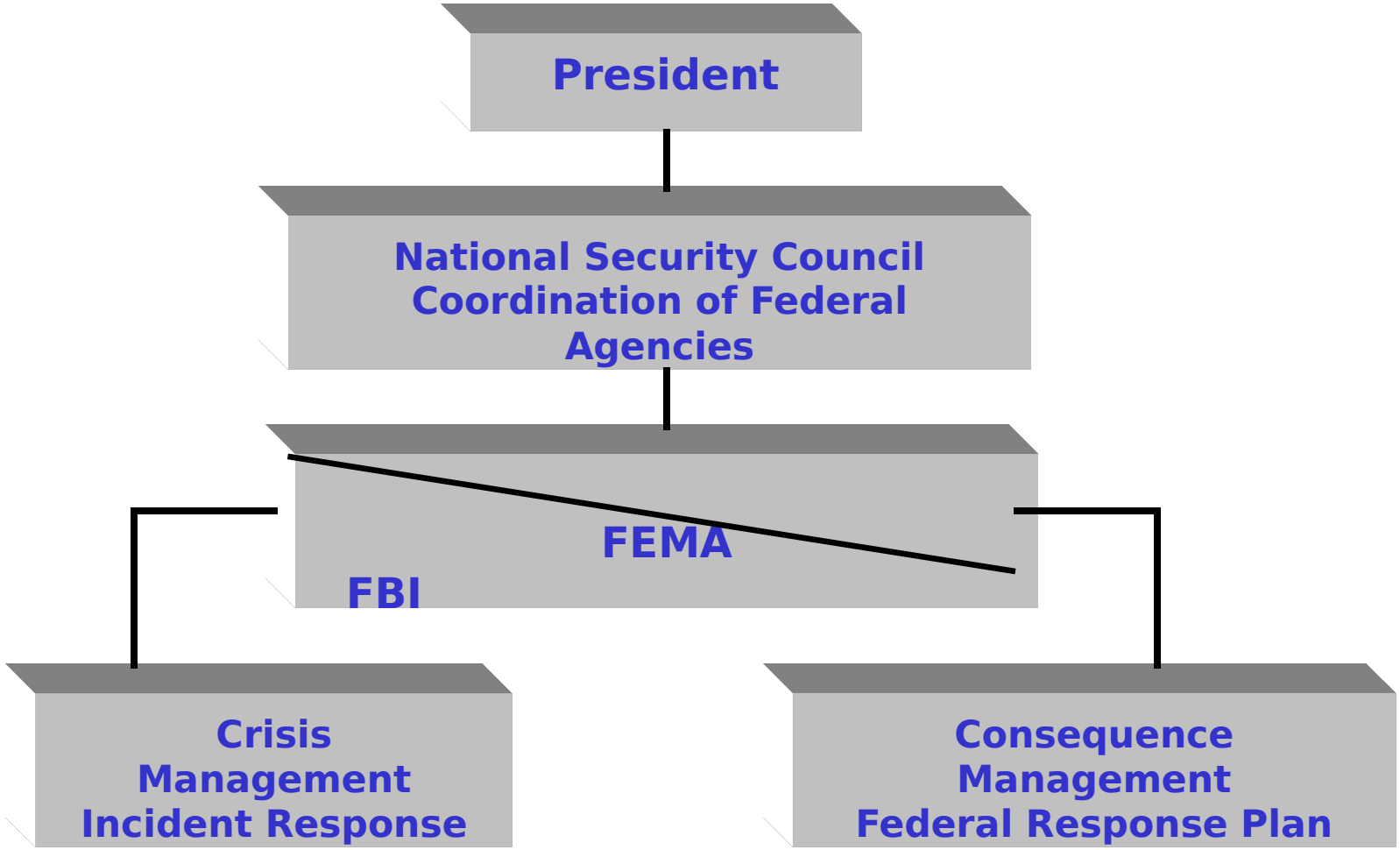
- **Homeland Defense (HLD) – The protection of US territory, sovereignty, domestic population, and critical infrastructure against external threats and aggression**
- **Homeland Security (HLS) – A concerted national effort to prevent terrorist attacks within the US, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur**
- **Civil Support (CS) – DoD support to US civil authorities for domestic emergencies, and for designated law enforcement and other activities**

Definitions
- Continued -

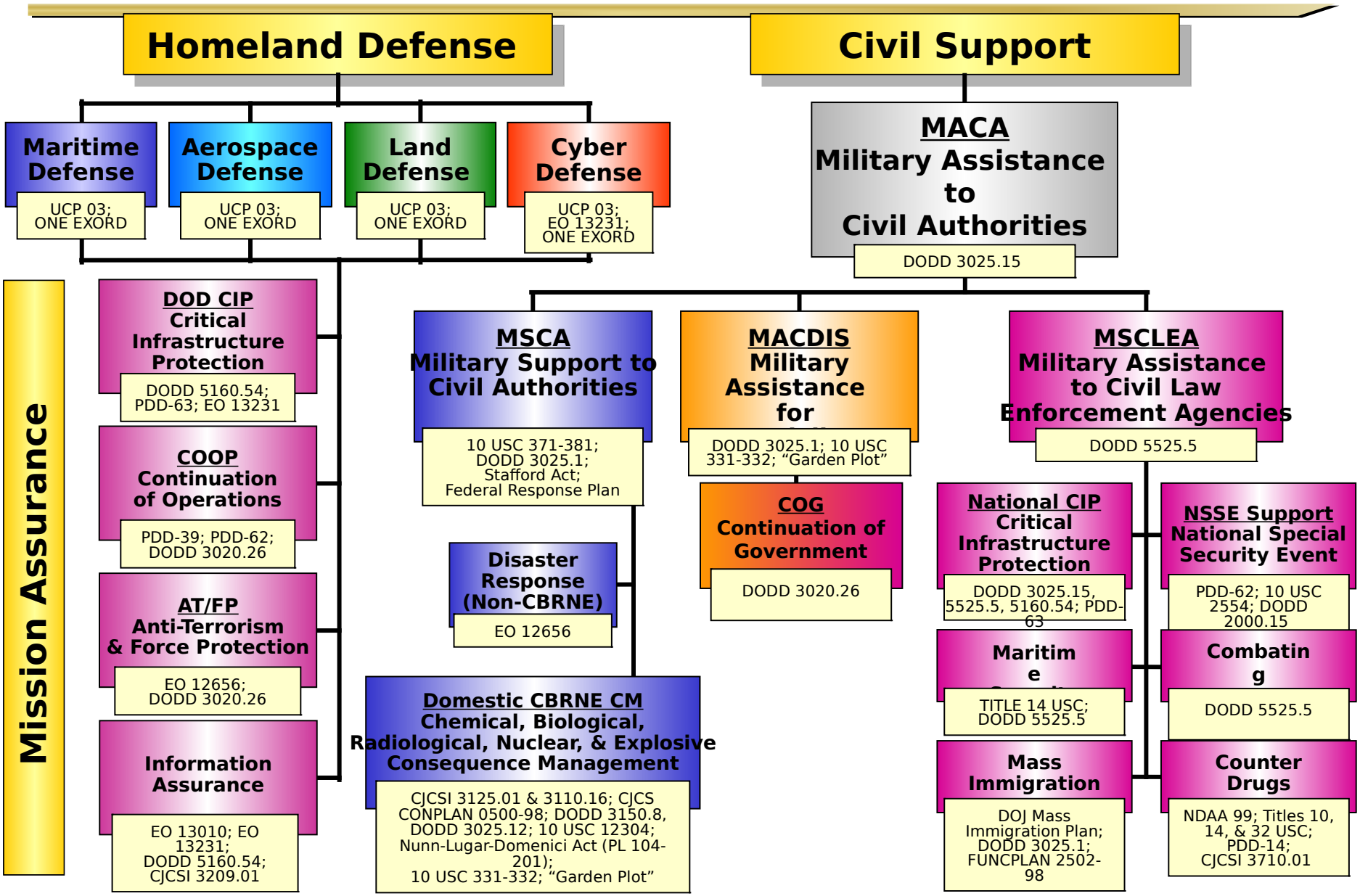
- **Crisis Management (CM) – Measures to resolve a hostile situation and investigate and prepare a criminal case for prosecution under federal law. Crisis management will include a response to an incident involving a weapon of mass destruction, special improvised explosive device, or a hostage crisis that is beyond the capability of the lead federal agency**
- **Consequence Management – Those essential services and activities required to manage and mitigate problems resulting from disasters and catastrophes – including transportation, communications, public works and engineering, fire fighting, information planning, mass care, resources support, health and medical services, urban search and rescue, hazardous materials, food, and energy**

PRESIDENTIAL DECISION DIRECTIVE 39

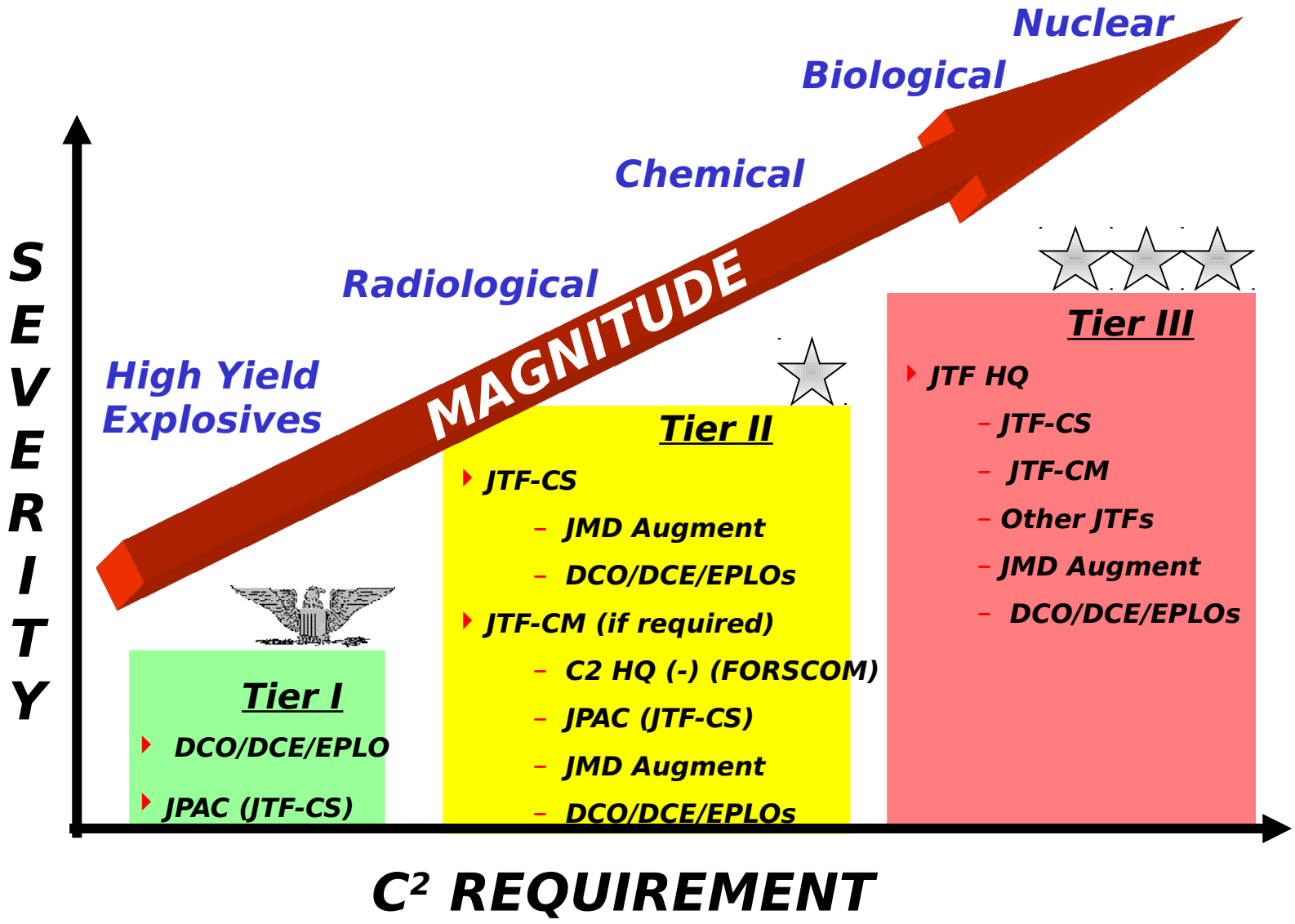
U.S Policy on Counterterrorism
June 21, 1995



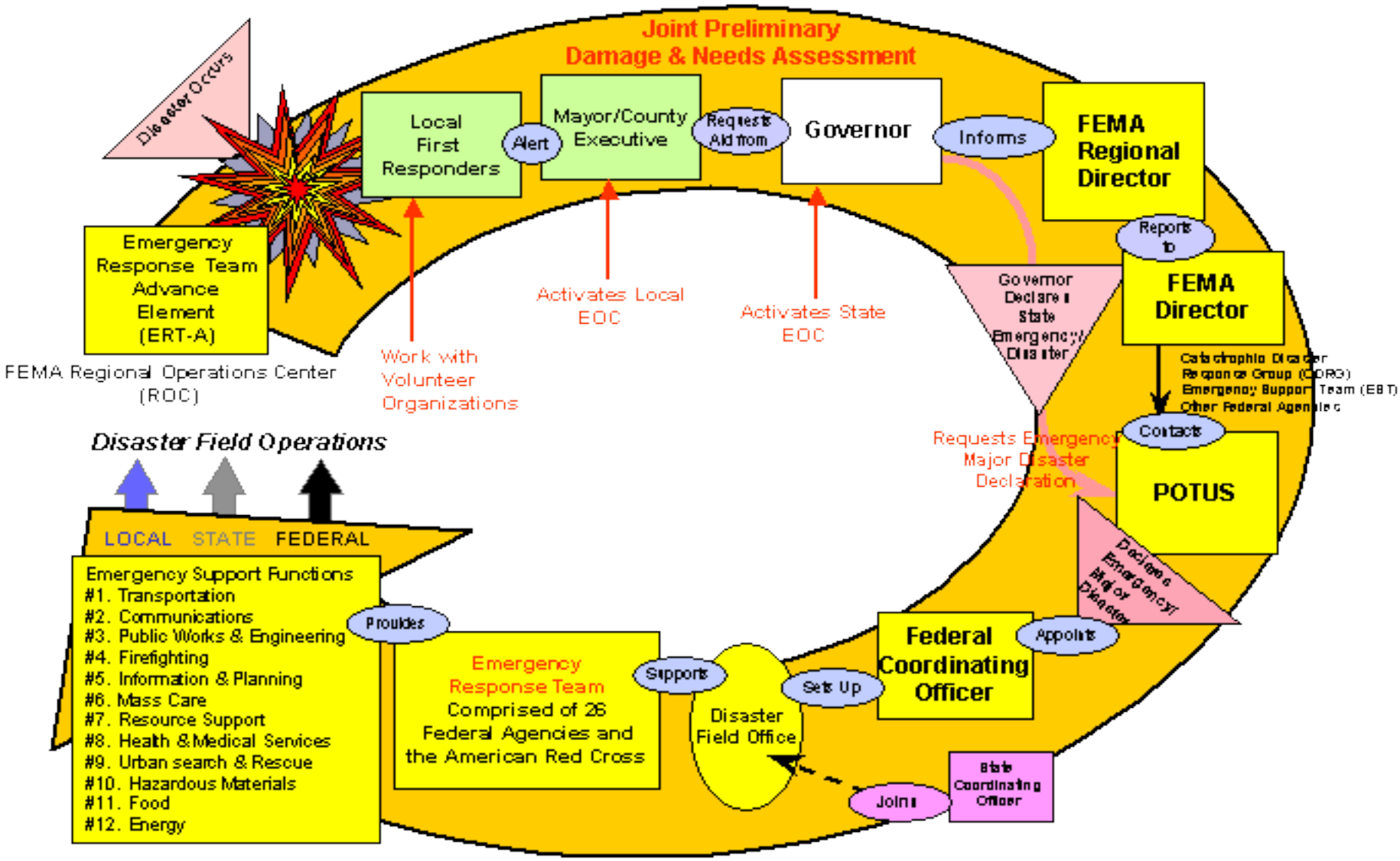
Key Functions and Authorities



CM C2 TIERED RESPONSE



THE FEDERAL RESPONSE PLAN



EMERGENCY SUPPORT FUNCTIONS

Transportation
Department of Transportation

Communications
National Communications System

Public Works and Engineering
Department of Defense (U.S. Army Corps of Engineers)

Firefighting
Department of Agriculture Forest Service

Information and Planning
Federal Emergency Management Agency

Mass Care
American Red Cross

Resource Support
General Services Administration

Health and Medical Services
Department of Health and Human Services

Urban Search and Rescue
Federal Emergency Management Agency

Hazardous Materials
Environmental Protection Agency

Food
Department of Agriculture Food and Nutrition Service

Energy
Department of Energy

DOD is the only Department or Agency that supports all 12 ESFs

INTERAGENCY DISASTER/EMERGENCY RESPONSE

STATE RESPONSE

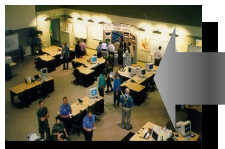
REQUEST FOR ASSISTANCE

C2

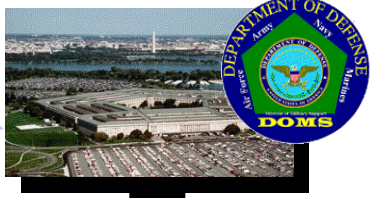
TITLE 32

FEDERAL RESPONSE

REQUEST FOR ASSISTANCE



DOD RESPONSE

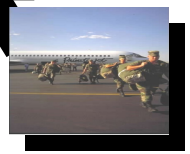


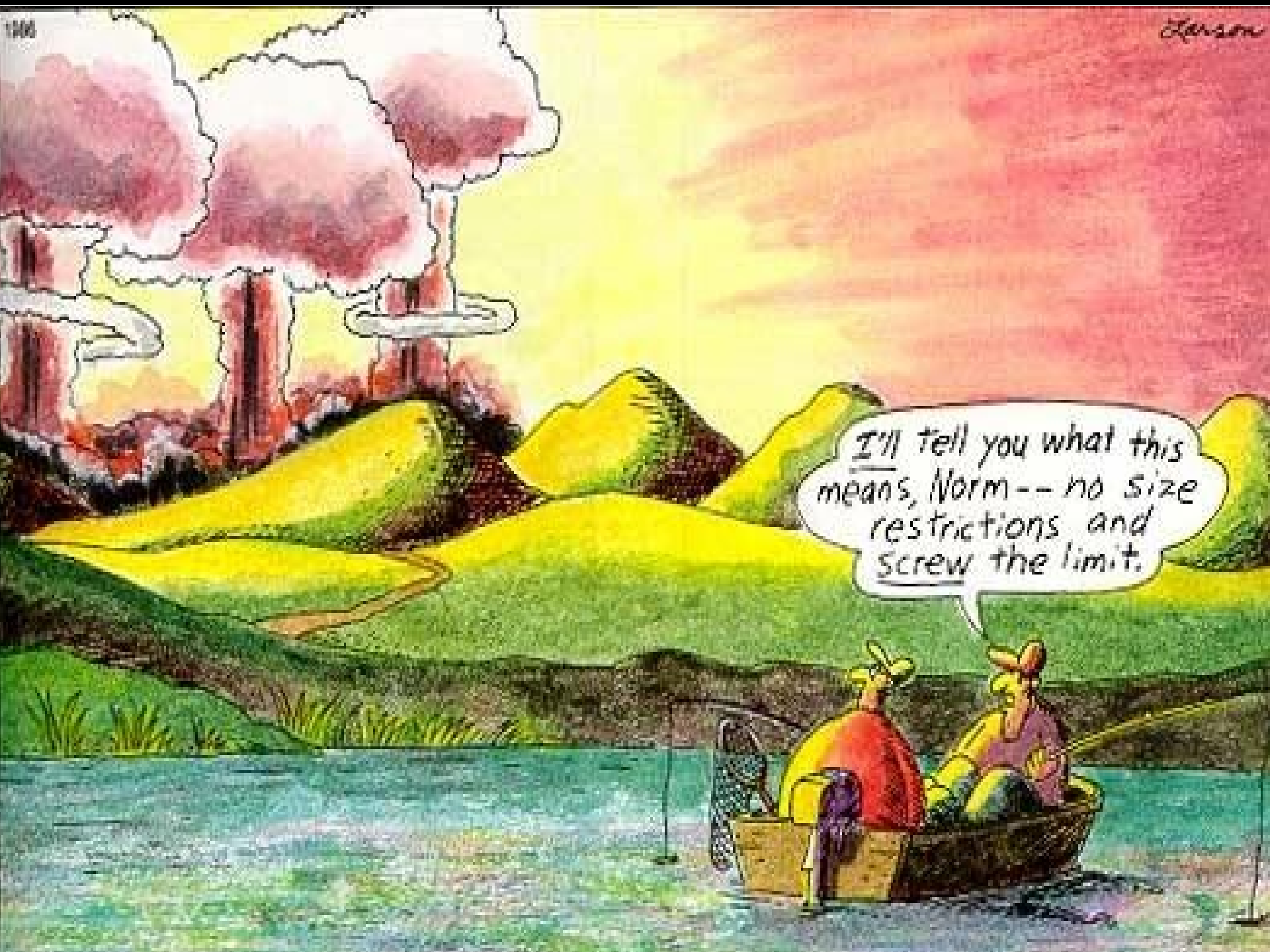
UNITED STATES NORTHERN COMMAND

REQUESTS FOR ASSISTANCE

XX

C²




1988
Larson
I'll tell you what this means, Norm -- no size restrictions and screw the limit.

AGENDA

- Legal framework for HLD and MACA
- Military Assistance to Civil Authorities
- Posse Comitatus
- Rules for the Use of Force
- Miscellaneous issues
  - National Guard issues
  - Intelligence oversight issues
  - Environmental issues

SOURCES OF LAW

- US Constitution
- International Law
- US Statute
- Federal Regulations (CFR)
- DoD Directives / Manual / Instructions
- Joint Staff Directives / manuals / instructions
- Military orders
- State and Local laws and regulations

EGAL FRAMEWORK FOR DOMESTIC OPS

Bifurcated Mission Authority

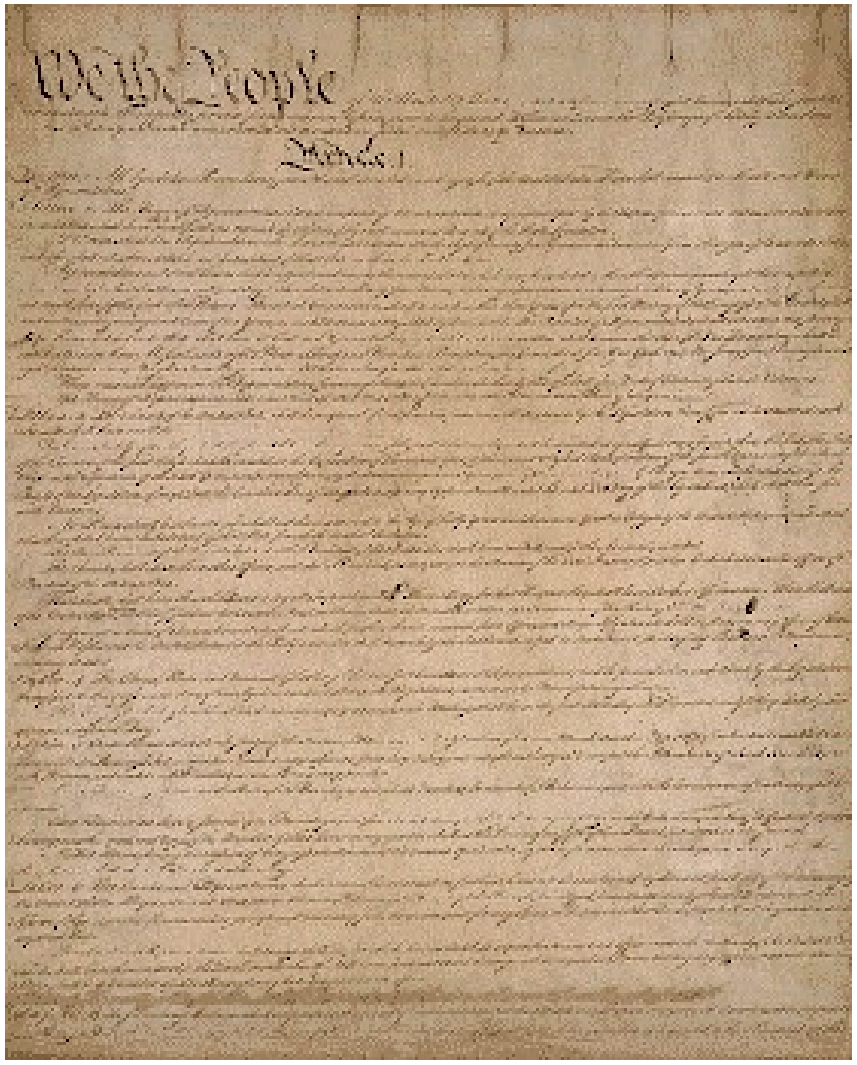
Authority to defend is Constitutionally based

Authority to assist is Statutorily based

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

Constitutional Authority To Defend



Fed Gov't Responsibility:

- Insure domestic tranquility; Provide for the common defense; Secure the blessings of liberty to ourselves and our posterity

Congressional Responsibility:

- Article I – raise and support Army/Navy, etc

Presidential Responsibility:

- Article II - Executive powers; Commander-in-Chief; Take care that the laws be faithfully executed
- Article IV, Sec 4 – to every state … protect against invasion/domestic violence

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

"The circumstances that endanger the safety of nations are infinite: and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all possible combinations of such circumstances; and ought to be under the direction of the same councils, which are appointed to preside over the common defense."

Alexander Hamilton
The Federalist No. 23

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

War Powers Resolution (WPR)

- Congressional attempt to put some controls on and become a partner in a president's decision to commit the military (50 USC 1541-1548)
- Requires the president to report to congress on the occurrence of certain events resulting in commitment of troops – 48 hours
- Triggers 60 day clock for congress to authorize the deployment; failure to issue WPR the president is required to withdraw troops
- No president has conceded the constitutionality of the WPR or has

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

War Powers Resolution

- Continued -

On September 18, 2001, Senate Joint Resolution 23 was passed by Congress authorizing the President:

"To use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks … or harbored such organizations…in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

Statutory Authority to Assist

- The Robert T. Stafford disaster assistance and emergency relief act of 1974 (42 USC 5121 et seq)
- 10 USC 371-81 – MSCLEA
- 10 USC 331-334 – Insurrection Act
- 32 USC 112 – NG in counterdrug operations
- Presidential protection assistance act of 1976 (pub. Law 94-524, Oct 17, 1976)

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

The Stafford Act
42 USC 5121 et seq

- Intent of congress to provide federal assistance to state and local governments to alleviate the suffering and damage resulting from disasters
- Upon request of a governor and finding that event are beyond the capability of a state, the President may declare a major disaster or emergency
- President may direct any federal agency, with or without reimbursement, to use its personnel, equipment, supplies, facilities and managerial, technical and advisory services to support the state and local assistance efforts
- The Stafford Act is the statutory basis for the federal emergency management agency (FEMA) regulations on disaster relief and the federal response plan (FRP) (44 CFR part 206)

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

Military Support for Civilian Law Enforcement Agencies
10 USC 371-81

- Information relevant to violation of law
- Equipment, supplies, spare parts, facilities
- Train and advise LE
- Detection and monitoring activities
- Authorizes assistance to DoJ in the event of a WMD emergency
- Support cannot adversely affect military preparedness
- Economy Act reimbursement
- Not an exception to Posse Comitatus

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

Statutory Authority to Assist
MSCLEA
Coast Guard LEDTs

- Authorizes coast guard law enforcement detachments (LEDTs) aboard naval vessels for drug interdiction activities
- Must be in a drug interdiction area as determined by SECDEF in consultation with attorney general
- Although primary purpose is drug interdiction, LEDT can perform such other law enforcement function as is otherwise within CG jurisdiction

LEGAL FRAMEWORK FOR DOMESTIC OPS

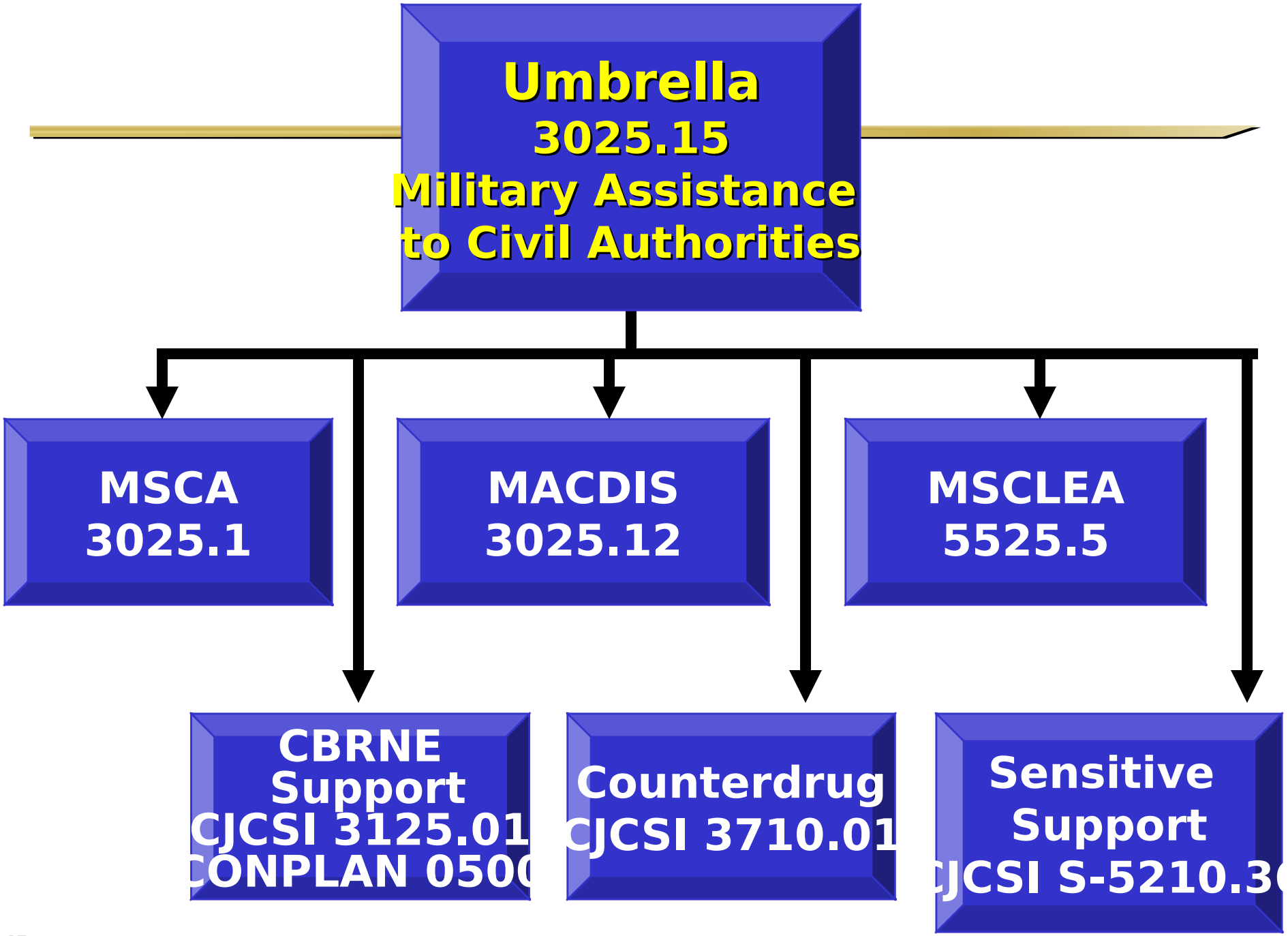
- CONTINUED -

Insurrection Act

10 USC 331 et seq

(Derived from Congressional Acts of July 29, 1861)

- **State legislature or governor can request federalization of National Guard or use of the active armed forces to quell an insurrection**
- **President on his own may use National Guard or active armed forces whenever he "considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States make it impracticable to enforce the laws of the US by ordinary course of judicial proceedings"**
- **Exception to Posse Comitatus**


Umbrella
3025.15
Military Assistance
to Civil Authorities
MSCA
3025.1
MACDIS
3025.12
MSCLEA
5525.5
CBRNE
Support
CJCSI 3125.01
CONPLAN 0500
Counterdrug
CJCSI 3710.01
Sensitive
Support
CJCSI S-5210.3

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

DoD Directive 3025.15
Military Assistance to Civil Authorities

- **MACA is the primary reference for all DoD support to civil authorities in domestic operations**
- **Requires all requests to be evaluated against the following criteria:**
  - **Legality – complies with applicable law**
  - **Lethality – weighs potential use of lethal force**
  - **Risk – safety to DoD forces**
  - **Cost – impact on DoD budget**
  - **Appropriateness – is it in the interest of DoD to conduct the mission?**
  - **Impact on readiness**

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

MACA

- SECARMY (DOMS) is approval authority for response to natural or man-made disasters
- SECDEF retains authority for approval:
  - Combatant commander forces to be used
  - Civil disturbances
  - Responses to acts of terrorism
  - Potential for use of lethal force
- Immediate response authority available to commanders
- Request involving use of combatant commander forces must be reviewed by CJCS

LEGAL FRAMEWORK FOR DOMESTIC OPS

- CONTINUED -

Immediate Response

- Any form of immediate action taken by a commander to assist civil authorities or the public to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions occurring where there has not been any declaration of major disaster or emergency by the President or an attack
- Available to a commander in any operations otherwise authorized by MACA
- Report request and action through the chain of command as soon as practicable

POSSE COMITATUS

The “Force of the County”

POSSE COMITATUS

- CONTINUED -

18 USC 1385

“Whoever, except in cases and under circumstances expressly authorized by the constitution or act of congress, willfully uses any part of the army or the air force as a Posse Comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”

POSSE COMITATUS

- CONTINUED -

Application

Applies to:

- Active duty Army and Air Force
- Reservists on active duty, ADT, IDT
- National Guard in Title 10 status
- DoD civilian when under direct command and control of military

Does not apply to:

- Off duty or private capacity
- National Guard in Title 32 status
- Coast Guard

POSSE COMITATUS

- CONTINUED -

Complementary Provisions

10 USC 375

- **Requires SECDEF to adopt regulations to restrict Army, Navy, Air Force and Marine**
- **Corps from participating in proscribed LEA activity (search, seizure, arrest or other, unless otherwise authorized by law)**

DoDD 5525.5

- **Implements 10 USC 375**
- **Provides guidance on permissible direct assistance of LEA**
- **Provides guidance on sharing of intel with LEA**
- **Provides guidance on allowing use of**

POSSE COMITATUS

- CONTINUED -

Proscribed Activity

The following are the primary activities prohibited by PCA jurisprudence, statute and/or regulation:

- **Interdiction of a vehicle, vessel, aircraft, or other similar activity**
- **Search or seizure**
- **Arrest apprehension, stop, and frisk**
- **Surveillance by military personnel**
- **Pursuit of individuals by military personnel**
- **Military personnel as undercover agents**
- **Use of military personnel as investigators, or interrogators**

POSSE COMITATUS

- CONTINUED -

Primary Exceptions

- **Articles II and IV, US Constitution**
- **10 USC 332 – Insurrection Act**
- **Military Purpose Doctrine**

Recent Examples

- **2002 Winter Olympics**
- **Border security**
  - **Soldiers "detailed" to LFA**
- **Other National Security Special Events (NSSEs)**

Mardi Gras

Nat'l Council of Governors

Masters Golf

Daytona 500

Academy Awards

UN Gen.

Grammy Awards

NCAA Final Four

World Economic Forum

POSSE COMITATUS

- CONTINUED -

Other Miscellaneous Statutes

- The National Emergencies Act
- Comprehensive environmental response, compensation and liability act
- Defense against weapons of mass destruction act of 1996
- 16 USC 23 - National Parks Protection
- 16 USC 1861 - Enforcement of Fishery Conservation
- 18 USC 112, 351, 1751 - Assistance in cases of crimes against foreign officials, members of congress, President and other dignitaries
- 18 USC 831 - Crimes involving nuclear materials
- 25 USC 180 - Removal of persons from Indian lands
- 42 USC 97 - Quarantine laws
- 42 USC 1989 - Civil rights
- 48 USC 1419 - Protection of rights of discoverer of Guano Islands
- 50 USC 220 - Enforcement of custom laws.

POSSE COMITATUS

- CONTINUED -

Thoughts

- **There is a long-standing aversion to the use of the military as a law enforcement agency**
- **There is also a long standing history supporting the domestic use of the armed forces**
- **PCA is a limitation that recognizes that aversion but does not otherwise prevent the use of the military when authorized by the constitution or statute.**

Rule for the Use of Force

Rules of Engagement (ROE)

- **Rule of engagement – Those directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered**
- **ROE within the "territorial jurisdiction of the United States" = Rules for the Use of Force (RUF)**
- **CJCSI 3121.01a of 15 January 2000, standing Rules of Engagement – Applicable only outside the territorial jurisdiction**
- **There are no "standing" RUF**

RULE FOR THE USE OF FORCE

- CONTINUED -

Key Terms

- **Deadly force** – Force likely to cause death or serious physical injury. Use of deadly force must be objectively reasonable under all circumstances known at the time. Force that is not likely to cause death or serious physical injury, but unexpectedly results in such harm or death, is not deadly force.

- **Self defense or defense of others** – Deadly forces used when it is necessary against a hostile person to protect personnel who reasonably believe themselves or others in their immediate vicinity to be in imminent

RULE FOR THE USE OF FORCE

- CONTINUED -

Key Terms

- **Imminent** – All available facts indicate that a hostile action is about to occur. The determination of whether a particular threat or danger is "imminent" is based on an assessment of all the circumstances known at the time. "Imminent" does not necessarily mean "immediate" or "instantaneous"
- **Serious physical injury** – Serious damage, such as deep cuts, torn members of the body, serious damage to internal organs, and other life threatening injuries but would not include minor injuries, such as a black eye or bloody nose

RULE FOR THE USE OF FORCE

- CONTINUED -

Key Terms

- **Inherently dangerous property** – Property that, in the hands of an unauthorized person, presents an imminent danger of death or serious bodily harm to others.
- **Property vital to national security** – Property designated by the NCA and its loss or damage or compromise would seriously jeopardize the fulfillment of a national defense mission.
- **National critical infrastructure** – Infrastructure designated by the NCA as essential to the functioning of the nation, including public utilities, or similar critical infrastructure vital to public health or safety, the sabotage of which would create an imminent danger of death or

RULE FOR THE USE OF FORCE

- CONTINUED -

Key Missions Which May Involve RUF

- DoD Civil Disturbance Plan – Garden Plot
- Law Enforcement and Security of DOD Installation – DODD 5210.56
- QRF/RRF Critical Infrastructure Protection – CJCS msg April 02 for training only
- Counterdrug missions – 10 USC 124, 371-381; CJCSI 3710.01; CJCSI 3121.02
- Quarantine – no existing RUF

RULE FOR THE USE OF FORCE

- CONTINUED -

Inherent Right to Self Defense

“These rules do not limit a commander's inherent authority and obligation to use all necessary means available and to take all appropriate actions in self-defense of the commander's unit and other US Forces in the vicinity.”

RULE FOR THE USE OF FORCE

- CONTINUED -

Footnote

The Domestic Violence Amendment to the Gun Control Act

18 USC 922

- **It is a felony for anyone who has ever been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition**
- **It is also a felony for anyone to issue a firearm to an individual who has been convicted of domestic violence**

RUF COMPARISON

Deadly Force	QRF/RRF	MACDIS (Garden Plot)	DOD 5210.56	USCINCJFCOM 2525	COMUSJFCOM 0500
Deadly force is justified only under conditions of extreme necessity and **when all 3 circumstances are present:**	X (words "extreme necessity" not present)	X	X		
1. Lesser means exhausted, unavailable or cannot be reasonably employed;		X	X		X ("no alternative other than deadly force")
2. Risk of death or serious bodily harm to innocent persons is not significantly increased by use;		X	X		X
3. Purpose of use is 1 or more of the following:	X	X	X		
a. Self-defense or defense of others in imminent danger of death or serious bodily harm by hostile person(s).	X	X	X	X (Commander's right; not individual)	X (Self-defense only)
b. Necessary to prevent theft or sabotage of assets involving National Securitv.	X		X		
c. Necessary to prevent theft or sabotage of assets not involving National Security but inherently dangerous to others.	X		X		
d. Reasonably necessary to prevent serious crime that involves imminent danger of death or serious bodily harm.		X	X		
e. Reasonably necessary to prevent destruction of public utilities or critical infrastructure vital to public health or safety.	X	X	X		
f. Reasonably necessary to arrest or apprehend a person who there is probably cause to believe has either committed b or e.		X (d. is referenced as opposed to b.)			
g. When specifically authorized to be necessary to prevent the escape of a prisoner, provided there is probable cause to believe that such person committed or attempted to commit b or e, and would pose an imminent danger of death or serious bodily harm to law enforcement, security or any other person.			X		

RUF COMPARISON

- CONTINUED -

Deadly Force	QRF/RRF	MACDIS (Garden Plot)	DOD 5210.56	USCINCJFCOM 2525	COMUSJFCOM 0500
Use the minimum amount of force necessary.		X	X		X
Warning shots prohibited.	X	(not mentioned)	X		X
When possible, and if won't increase danger, provide clear warning that use of deadly force is contemplated or imminent.	X	X			
Fire shots with due regard for safety of bystanders.			X		
When firearm discharged, do so with intent to render person shot incapable of continuing offending conduct.			X		
Discharge firearm with intent to wound, rather than kill.		X			
Do not remove weapon from holster unless reasonably intend to use.			X		
Basic issue weapon is one with only safe and semi-automatic selection capability.		X (specific approval to deploy with automatic weapons required; must be fired in semi-auto mode only)			
Required to receive order from an authorized Officer before can load or fire weapon.	X (only applies to loading)	X			
Can be authorized to fix bayonets.		X			

NATIONAL GUARD ISSUES

Dual Mission

State Mission – Provide trained and disciplined forces for domestic emergencies or as otherwise required by state law

Federal Mission – Maintain properly trained and equipped units available for prompt mobilization for war, national emergency, or as otherwise needed

NATIONAL GUARD DUTY STATUS

	State Active Duty	Title 32	Title 10
C2	Governor	Governor	President
Where	IAW State Law	CONUS	Worldwide
Pay	State	Federal	Federal
Mission types	IAW State Law (Riot control, Emergency Response, etc.)	IDT, AT, & other federally auth.	Full Time Active Duty
Discipline	State Military Code	State Military Code	UCMJ
PCA applies	No	No	Yes

INTELLIGENCE OVERSIGHT

- What is the role of the DoD intelligence community in HLD & MACA?
- How do the restrictions on gathering intelligence on US persons affect HLD and MACA?
  - Executive order 12333
  - DoDD 5240.1 – DoD intelligence activities
  - DoD 5240.1-R – procedures governing the activities of DoD intelligence components that affect US persons
- Action memo from JS J2 (draft)
  - "Existing EO and regulations are not restrictive and do not restrict DoD intelligence and law enforcement collection, retention, and dissemination of information activities with respect to domestic force protection and combating terrorism"

INTELLIGENCE OVERSIGHT

- CONTINUED -

Collection On US Persons
Procedure 2

- Information obtained with consent of person
- Publicly available information
- Reasonably believed to constitute foreign intelligence, anti-terrorism, counter-narcotics
- Information constitutes counterintelligence
- Assessing suitability or credibility as source of intelligence
- Protection of intelligence source & methods
- Physical security
- Personnel security
- Communications security
- Narcotics
- Threats to safety by terrorist
- Overhead reconnaissance
- Administrative purposes

ENVIRONMENTAL MATTERS

Military Operations Other Than War (MOOTW)

- During MOOTW, all legal requirements imposed … during peacetime still apply
- No general suspension of any environmental law or regulation for reasons of expediency / necessity
- Emergency or national security exemptions are very rare, fact-specific and limited in application
- The planner of MOOTW must be aware of the laws, … and plan to protect the environment as practicable while achieving MOOTW objectives

ENVIRONMENTAL MATTERS

- CONTINUED -

Applicable Environmental Statutes

- National Emergencies Act – 50 USC 1601 et. Seq.
- National environmental Policy act (NEPA) – 42 USC 432
- Endangered Species Act (ESA) – 16 USC 1531-1544
- Marine Mammal Protection Act – 16 USC 1361, 1362, 13
- Coastal Zone Management Act – 16 USC 1451-1465
- Noise Control Act – 42 USC 4901-4918
- Clean Water Act – 33 USC 1251-1387
- National Historic Preservation Act – 16 USC 470 et seq
- Clean Air Act – 42 USC 7401-7671
- Resource Conservation and Recovery Act – 42 USC 6901
- Toxic Substance Control Act – 15 USC 2601-2692
- Prevention of Pollution from Ships Act – 33 USC 1901-1

Final Thoughts:

The rule of law and our great nation will survive. You can topple our buildings but not our spirit.

Questions

- **BACKUP SLIDES**

Definitional Conundrum

- Homeland Security (HLS): The preparation for, prevention of, deterrence of, preemption of, defense against, and response to threats and aggression directed towards US territory, sovereignty, domestic population, and infrastructure; as well as crisis management, consequence management, and other domestic civil support.
  - Homeland Defense (HLD): The Protection Of U.S. Territory, sovereignty, domestic population, and critical infrastructure against external threats and aggression.
  - Civil Support (CS): DoD Support To US Civil Authorities For Domestic Emergencies, and for designated law enforcement and other activities.

Definitional Conundrum

Unified Command Plan

- Homeland Security (HLS): NONE
- Homeland Defense (HLD): Deter attacks against the United States, its territories, possessions and bases, and employing appropriate force should deterrence fail.
- Civil Support (CS): Provide military assistance to US civil authorities, including consequence management operations in response to CBRNE incidents, military support to civil authorities, military assistance for civil disturbances, and other civil support, authorized by the President or the Secretary of Defense

Definitional Conundrum

SECDEF TO CONGRESS

7 May 2002

"Emergency or temporary circumstances in which other federal agencies take the lead and DoD lends support are appropriately described as homeland security."

NATIONAL STRATEGY FOR HOMELAND SECURITY

DRAFT

"Homeland security is a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks should they occur."

USNORTHCOM BIRTH

UNIFIED COMMAND PLAN 2002

30 April 2002

- **Establishes USNORTHCOM as a Geographic Combatant Commander with all combatant commander responsibilities**
  - **Deter attacks against the United States, its territories, possessions and bases, and employing appropriate force should deterrence fail.**
  - **Planning for and executing military operations as directed by the POTUS or SECDEF in support of NMS**
  - **Force Protection of assigned and attached and all military forces within AOR**
  - **NEOS?**
  - **Military reps to international and national agencies**
  - **Single point of contact on military matters with AOR**
  - **Security Assistance Programs**
  - **Single point of contact for Counterproliferation of WMD**

USNORTHCOM BIRTH

UNIFIED COMMAND PLAN 2002

- **Specific taskings to USNORTHCOM**
  - **Provide military assistance to US civil authorities, including consequence management operations in response to CBRNE incidents, military support to civil authorities, military assistance for civil disturbances, and other civil support, authorized by the President or the Secretary of Defense**
  - **Provide CBRNE technical advise and assistance to other Commanders outside CONUS**
  - **Plan for binational Canada-US land and maritime defense**
  - **Triple hatted as USELEMNORAD and CINCNORAD (will normally be CINCNORAD)**

Definitions
- Continued -

- **Civil Authorities – Nonmilitary federal, state, or local government agencies**
- **Military Assistance to Civil Authorities (MACA) – DoD activities and measures covered under MSCA, plus DoD assistance for civil disturbances, counterdrug, sensitive support, counterterrorism and law enforcement**
- **Military Support to Civil Authorities (MSCA) – Activities and measures taken to foster mutual assistance and support between DoD and any civil government agency in planning or preparedness for, or in the application of resources for response to, the consequences of civil emergencies or attacks, including national security emergencies.**